United Nations AT/DEC/1052

Administrative Tribunal

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ADMINISTRATIVE TRIBUNAL

Judgement No. 1052

Case No. 1138: BONDER Against: The Secretary-General of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of: Mr. Julio Barboza, Vice-President, presiding; Mr. Spyridon Flogaitis; Ms. Brigitte Stern;

Whereas, on 4 April 2000, Glenio Bonder, a former staff member of the United Nations Environment Programme (hereinafter referred to as "UNEP"), filed an application that did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 20 May 2000, the Applicant, after making the necessary corrections, again filed an Application, in which he requested the Tribunal to order:

"– His reinstatement within UNEP;

– That he be offered a permanent appointment, ...;

– Failing this, that he be offered a fixed-term appointment;

– Or, failing this, that he be awarded compensation in an amount equivalent to two years' salary, ..., with interest, calculated at the rate of 8 per cent as from 1 January 1998;

– That he be awarded compensation in an amount equivalent to two years' salary as compensation for the various types of moral injury suffered;

– That he be awarded $4,000 as reimbursement for procedural costs."

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Whereas, at the request of the Respondent, the Tribunal extended the time allowed for the Respondent to submit his Answer first to 31 October 2000 and later to 31 January 2002;

Whereas the Respondent filed his Answer on 30 November 2001;

Whereas the Applicant filed his Written Observations on 14 January 2002;

Whereas the facts of the case are the following:

The Applicant entered the service of the United Nations Industrial Development Organization (UNIDO) in April 1984 and remained there to June 1991. On 15 July 1991, the Applicant entered the service of UNEP under a fixed-term contract at the P-3 level as a Programme Officer in the Industry and Environment programme in Paris. His contract was subsequently renewed several times before expiring on 31 December 1997. During his service with UNEP, the Applicant was the subject of two performance evaluation reports, covering the periods from 16 July 1991 to 31 March 1992 and from 1 July 1992 to 31 March 1993, which rated his performance as "very good".

In 1992 the title of the Applicant's post was changed to Administrative/Programme Officer to take account of the fact that since his recruitment he had primarily been assigned administrative duties. In October 1996, a newly appointed Administrative Officer took over some of the administrative functions that the Applicant had previously been performing.

On 11 September 1996, an executive directive was issued by UNEP (UNEP/ED/1996/14) entitled "Redeployment". The directive required assistant executive directors and regional directors, in consultation with the Executive Director, to determine which posts could be vacated based on an individual and comparative review of the situation of all staff members belonging to the same occupational group or discharging similar functions.

On 11 October 1996, the Assistant Executive Director of UNEP informed the Applicant that the review of his situation had been unfavourable and that he was among the staff to be redeployed. On 15 October the Applicant requested the ad hoc Joint Departmental Panel on Redeployment ("the Panel") to review the decision to redeploy him. In its report dated 18 November 1996, the Panel recommended that

the Applicant's name should be removed from the list of staff to be redeployed and that he should be placed against a vacant Trust Fund post in the Industry and Environment programme.

On 11 December 1996 the Panel recommended that the Applicant should be placed on the post of Programme Officer, Ozone Action, in Paris. On 20 December, the Director of the Industry and Environment programme informed the Appointment and Promotion Board that the post had been frozen and recommended that the Applicant should be placed on a post in Mexico. The Board recommended that the Applicant should be offered a post in Paris, but acknowledged that the proposed post in Mexico was a suitable alternative. On 26 February, the Applicant informed the Human Resources Management Service that he suffered from a chronic condition that prevented him from accepting the post in Mexico.

On 22 April 1997, the Executive Director of UNEP instructed the Director of the Industry and Environment programme to place the Applicant on one of the three vacant posts in the programme up to the end of the year and to make a recommendation based "on solid grounds" for the extension or non-extension of the Applicant's contract. The Director of the Industry and Environment programme responded that the Applicant could not be placed against any of the three vacant posts because one was about to be abolished, another had been reclassified at the P-2 level and the third had been submitted for reclassification from the P-3 to the P-5 level. This situation was subsequently explained to the Applicant.

On 21 November 1997 the Applicant was informed that his contract would not be renewed.

On 26 November 1997 the United Nations Audit and Management Consulting Division of the Office of Internal Oversight Services (OIOS) submitted to the Executive Director of UNEP its audit report on the Industry and Environment Office (UNEP-IE). OIOS criticized UNEP for assigning staff members functions that did not correspond to the posts for which they had been recruited, with express reference to the Applicant. OIOS also noted that it was only after an Administrative Officer had been recruited to perform the functions formerly performed by the Applicant that the latter had been selected for redeployment, and that his post had been frozen at a time when other posts were being created. Moreover, OIOS found the reasons given for freezing the Applicant's post unconvincing.

On 31 December 1997 the Applicant's fixed-term contract expired.

On 15 January 1998 the Applicant requested a review of the decision not to renew his contract. On 21 April 1998 he filed an appeal with the Joint Appeals Board. The Board issued its report on 14 December 1999. The following considerations, conclusions, recommendations and remarks of the Joint Appeals Board were as follows:

"***Considerations***

...

47. 2. Receivability * res temporis*

...

...

49. The panel is convinced that the fact that there was no standing Joint Appeals Board in Nairobi in early 1998 and no established secretariat of the Joint Appeals Board which could have advised the staff member on the procedures for submitting appeals warrants the assumption of exceptional circumstances as defined by the Administrative Tribunal. The panel therefore granted a waiver of the time limits and decided to accept the appeal.

50. 3. Concerning the merits of the appeal ...

51. 3.1 ...

The panel therefore had no choice but to reject the [Applicant's] plea for reinstatement as well as his plea to receive a permanent contract.

...

53. 3.3 The panel, however, finds that the present case warrants compensation of the staff member, due to arbitrary treatment on the part of the Director of UNEP-IE on the occasion of the non-extension of his contract.

...

Conclusions and recommendations

67. For the foregoing reasons the panel *concludes* that:

1. The [Applicant] has no legal expectancy of renewal of his fixed-term appointment or conversion of his fixed-term appointment to a permanent appointment.

2. The [Applicant] will not be reimbursed for his personal expenses in pursuit of the present appeal.

3. The [Applicant] was treated arbitrarily on the occasion of the non-extension of his fixed-term appointment.

68. The panel therefore *recommends* to the Secretary-General that the [Applicant] be paid six months' net base salary as compensation.

69. The panel makes *no further recommendations* in support of the appeal.

Remarks

...

71. While the panel accepts and respects the jurisprudence of the Administrative Tribunal that only exceptional circumstances will *de jure* give a legal expectancy of renewal, it cannot but remark that *de facto* the situation in the United Nations is different. In the absence of proof of unsatisfactory performance, and in the presence of availability of funding, the average staff member will always find that his expectation of renewal of his fixed-term contract will be fulfilled. The jurisprudence of the Administrative Tribunal only leaves the staff member with compensation as a remedy for the violation of his/her right to a non-arbitrary decision on the extension of non-extension of contract, as the present case clearly shows. The panel finds that this result does not adequately rectify the wrong done to the staff member in this particular case. It would therefore like to suggest to the Administration that good faith efforts should be made to find the [Applicant] a suitable position, not only in order to do full justice to the [Applicant] but also as a means to safeguard the reputation of the United Nations, which can be seriously damaged by the non-rectification of such arbitrary acts as have been uncovered in the present case.

..."

On 29 March 2000 the Under-Secretary-General for Management transmitted a copy of the report of the Joint Appeals Board to the Applicant and informed him of the following:

> "...
>
> The Secretary-General has decided to accept the conclusions of the Board and, in accordance with its unanimous recommendation, to compensate you in the amount of 6 (six) months' net base salary at the rate in effect on the date of your separation from service.
>
> ..."

On 20 May 2000 the Applicant filed the above-referenced Application with the Tribunal.

Whereas the Applicant's principal contentions are:

1. The Joint Appeals Board rightly concluded that the Applicant had been the subject of arbitrary treatment warranting compensation, but the compensation recommended is not sufficient.

2. The Applicant could legitimately expect that his fixed-term appointment would be renewed.

3. The Respondent violated staff rule 104.12 (b) (iii) by not giving the Applicant every reasonable consideration for a permanent appointment.

Whereas the Respondent's principal contentions are:

1. A fixed-term appointment does not carry any legal expectancy of renewal or conversion to any other type of appointment. The Applicant's rights were not violated by the decision not to renew his appointment.

2. The Applicant has received appropriate compensation for the irregularities that occurred.

The Tribunal, having deliberated from 5 to 21 November 2002, now pronounces the following judgement:

I. The Tribunal will first consider the nature of the rights deriving from the existence of a fixed-term contract and the manner in which they affect the conditions of termination of service resulting in non-renewal of fixed-term contracts. It will

then apply the principles thus elicited to the facts of the case, examining first the situation that resulted from the successive fixed-term contracts obtained by the Applicant and then the circumstances surrounding the non-renewal of his last fixed-term contract.

II. The Tribunal reaffirms, first of all, as the Respondent maintains and the Applicant concedes, that the Applicant did not have a right of renewal of his contract, in accordance with rule 104.12(b)(ii), which clearly states that a "fixed-term appointment does not carry any expectancy of renewal or of conversion to any other type of appointment".

III. While clear on that general approach, the Tribunal nonetheless points out that there are certain situations in which the prospects for renewal or conversion to another type of appointment are strengthened. Such is the case when the Administration has made certain commitments, either specifically towards the Applicant or generally towards a certain category of persons into which the Applicant falls. The two cases may overlap, and that is what occurred in the present case, as will be shown later.

The first situation arises when the Administration has given specific assurances of renewal or of another type of appointment to a staff member and thereby created a *legal expectancy*, which merits protection, of having the contract renewed. Such cases are exceptional and always require a clear expression of the Administration's intent.

The second situation arises when the Administration accords certain staff members increased prospects for renewal under a different type of appointment — thus, of course, increasing the likelihood that their contracts will not be terminated — even though the increased prospects do not go so far as to create a full-fledged right to a different type of appointment or a true legal expectancy. The situation in which such increased prospects arise is described in staff rule 104.12(b)(iii), which provides:

> "Notwithstanding subparagraph (ii) above, upon completion of five years of continuous service on fixed-term appointments, a staff member who has fully met the criteria of staff regulation 4.2 and who is under the age of fifty-three years will be given every reasonable consideration for a permanent appointment, taking into account all the interests of the Organization."

The obligation of the Administration in this second situation is thus *an obligation to give every reasonable consideration* to the staff member's case when his or her fixed-term contract is due to expire.

IV. It is the established jurisprudence of the Tribunal that even where there is no acquired right to renewal of a fixed-term contract the Tribunal monitors the way the Administration exercises its discretion not to renew a contract, in order to prevent a discretionary measure from becoming arbitrary. It is especially important for the Tribunal to ensure the right of staff members to an equitable procedure when discretionary decisions are taken by the Administration, in order not to leave them entirely to the mercy of caprice. The Tribunal has many times affirmed the imperative need for oversight of the discretionary decisions of the Administration, in which it seeks a delicate balance between the need to allow the Secretary-General of the Organization room to exercise judgement and the need to provide an essential protection to the staff members working in the service of the Organization. This well-known approach is illustrated by a relatively recent case, Judgement No. 981, *Masri* (2000), in which the Tribunal clearly set out the parameters of its oversight:

> "Staff rule 104.12(b)(ii) invoked by the Respondent provides that fixed-term appointments do not carry any expectancy of renewal or of conversion to any other type of appointment. The discretion of the Secretary-General to renew or not to renew a fixed-term contract is wide, but it has, however, its limits. Administrative decisions affecting a staff member must not run counter to certain concepts fundamental to the Organization. They must not be improperly motivated, they must not violate due process, they must not be arbitrary, taken in bad faith or discriminatory" (para. VII).

V. The Tribunal's oversight thus does not extend to the merits of the non-renewal decision but focuses on guarantees of due process in the broad sense, a concept crucial to the rule of law. The Tribunal stresses that the requirement to respect due process becomes even more imperative as the prospects for renewal are strengthened. In such a situation, the loss of an opportunity to renew a fixed-term contract is a more serious blow for the Applicant to the extent that the likelihood of renewal has become greater. The Tribunal has to take this factor into account, among others, including the seriousness of the violations committed by the Administration, in reaching a decision in the case before it.

VI. Depending on the extent to which proper procedures have been ignored and on the existence of solid prospects for renewal, the Tribunal may conclude that the

procedural irregularities do not fundamentally vitiate the decision and that the applicant is entitled only to a limited compensation for the inadequate treatment of his or her case; or it may conclude that, although the applicant does not have a right of renewal, the procedural irregularities were so serious or so relevant to the decision not to renew that the non-renewal decision should be considered illegal and the staff member entitled either to renewal of his or her contract or to compensation in lieu thereof if the Administration refuses to comply. The latter conclusion applies in principle only in cases where there have been serious and manifest violations of the rights of the staff member and also where the likelihood that the staff member's contract would be renewed was particularly strong for general and/or specific reasons.

VII. To illustrate the first hypothesis, in which the irregularities are not great enough to vitiate the non-renewal decision, the Tribunal cites Judgement No. 261, *Boelen* (1980), in which it found a series of minor irregularities in the way the Applicant's performance evaluation reports had been prepared, but had also found that:

> "... this disregard of Administrative Instruction ST/AI/115 does not carry such weight as would be necessary to find that the Respondent's decision not to renew the Applicant's fixed-term appointment was either unjust or illegal. In the Tribunal's view, the payment received by her on the recommendation of the Joint Appeals Board adequately compensated her for any losses she might have suffered on this account" (para. VIII). (See also Judgements No. 305, *Jabbour* (1983), and No. 319, *Jekhine* (1983)).

It follows *a contrario* from this decision that if the irregularities had been more serious, the Tribunal might not have hesitated to declare the non-renewal illegal and rescind it.

VIII. To illustrate the second hypothesis, in which the irregularities surrounding the decision not to renew are so serious or relevant that they vitiate it and cause the Tribunal to order the reinstatement of the staff member, the Tribunal cites Judgement No. 440, *Shankar* (1989), in which it agreed with the reasoning and conclusions of the Joint Appeals Board, expressed as follows:

> "... as the non-extension of the appellant's fixed-term appointment is vitiated by lack of due process, lack of good faith and procedural irregularities, the Panel *recommends* that the appellant should be reinstated in his post or in a position commensurate with his qualifications and experience".

The Tribunal adopted this analysis, stating: "After reviewing the circumstances of the case, the Tribunal agrees with the Joint Appeals Board's finding that the non-renewal of the Applicant's fixed-term appointment was vitiated by lack of due process, lack of good faith and procedural irregularities" (para. VII).

The lack of due process for which the Administration was criticized in that case entailed in part the failure to provide a report assessing job performance, as in the present case, and in part the fact that the Director of the Centre where the Applicant worked made adverse comments without disclosing them to the Applicant, again as in the case at hand.

As to the consequences the Tribunal drew from that in its decision with regard to the Applicant's case, the situation was as follows. The Joint Appeals Board had recommended reinstatement and failing that compensation equivalent to one year's net salary. The Applicant had requested the Tribunal to rescind the decision of the Secretary-General to choose the second option, namely, payment of compensation in lieu of reinstatement, and to confine the choice of the Secretary-General to reinstatement. The Tribunal, recalling article 9 of its Statute, which always offers the Secretary-General that option, said that it could not overturn the decision of the Secretary-General, which had merely anticipated the exercise of the option accorded to him by the Statute. However, the Tribunal was very clear on the legal reasoning that sufficiently serious irregularities could entail the rescission of a decision not to renew a fixed-term contract:

> "Having concluded in paragraph VII that the contested decision was illegal, the Tribunal, in accordance with article 9, paragraph 1, of its Statute, should normally do two things:
>
> (a) Order the rescission of the contested decision of non-renewal of the Applicant's fixed-term appointment which expired on 31 December 1985; and
>
> (b) At the same time, fix the amount of compensation to be paid to the Applicant for the injury sustained should the Secretary-General decide, in the interest of the United Nations, that the Applicant shall be compensated without further action being taken in his case" (*Shankar*, ibid., para. XII).

In the Tribunal's opinion, the applicant in the *Shankar* case was far less badly treated than the Applicant in the case at hand; yet the Tribunal found that his rights had been violated and ordered his reinstatement.

IX. The case is not an isolated precedent. It will be sufficient here to cite a few cases, dating from different time periods, in which the Tribunal found that a non-

renewal decision was unacceptable and in principle reinstated the staff member. In Judgement No. 767, *Nawabi* (1996), the applicant entered the service of the Organization on 20 January 1992 on a one-year fixed-term contract. On arrival, he learned that the post had been eliminated. He was placed against another post in September 1992, and his fixed-term appointment was extended to 15 October 1993. Even though the staff member had less than two years of service with the Organization, the Tribunal, in view of the fact that prospects of permanent employment in the United Nations had been held out to him, thought that the conduct of the Administration called for the rescission of the decision and the reinstatement of the staff member:

> "While it is correct that the fixed-term appointment does not carry any expectancy of renewal or of conversion, the Tribunal notes that the Applicant left a career position to join the service of the Organization, having been told, not just once, that the prospect existed of continuation of his service, and that, subject to satisfactory performance, he might have the opportunity of a career with the United Nations" (para. IV).
>
> ...
>
> "For the foregoing reasons, the Tribunal:
>
> A. (1) Rescinds the decision of the Respondent dated 15 October 1993;
>
> (2) Orders that the Applicant be reinstated to a post comparable to that for which he was recruited, with full payment of salary and emoluments from the date of his separation, less his earnings from other employment in the interim.
>
> B. Should the Secretary-General, within 30 days of the notification of this judgement, decide, in the interest of the United Nations, that the Applicant shall be compensated without further action being taken in his case, the Tribunal fixes the compensation to be paid to the Applicant at two years of his net base salary at the rate in effect on the date of his separation from service, in addition to the sum already paid to the Applicant, on the recommendation of the JAB" (para. X).

Another case in which the Tribunal ordered the rescission of a decision by the Administration not to renew a fixed-term contract and in consequence the reinstatement of the staff member was Judgement No. 491, *Murthy* (1990), in which it rescinded a decision not to renew after eight years of fixed-term contracts.

X. The Applicant in the present case was in just such a special situation, in that his prospects for renewal had been strengthened owing to both the general situation in which he found himself and the particular circumstances of his case.

XI. To begin with, the Applicant fell into the general category of staff members with fixed-term contracts to be given every reasonable consideration for a permanent appointment pursuant to article 104.12(b)(iii) when their contracts expired. He was less than 53 years of age when the non-renewal decision was taken in November 1997, having been born on 16 February 1956. He had completed more than five years of continuous service on fixed-term appointments, since he entered into service with UNEP on 15 July 1991 and his last fixed-term contract expired on 31 December 1997 and was not renewed. Lastly, as far as can be determined from the available evidence -- the two performance evaluation reports covering the periods from 16 July to 31 March 1992 and from 1 April 1992 to 31 March 1993, both of which show a "very good" performance rating — he met the requirements of staff regulation 4.2, which states that:

> "The paramount consideration in the appointment, transfer or promotion of the staff shall be the necessity of security the highest standards of efficiency, competence and integrity. Due regard shall be paid to the importance of recruiting the staff on as wide a geographical basis as possible."

It should also be noted that, as the only staff member with Brazilian nationality at the United Nations Environment Programme's Industry and Environment Office (UNEP-IE), he also met the conditions for geographical distribution set forth in staff regulation 4.2.

XII. Even more to the point, the individual situation of the Applicant merits consideration. For many years now the Tribunal has said that it must examine all the circumstances to determine the extent of the rights to which a staff member recruited on a fixed-term contract is entitled. For instance, in Judgement No. 95, *Sikand* (1965), it stated: "The Tribunal in its jurisprudence has established that the terms and conditions of employment of a staff member with the United Nations may be expressed or implied and may be gathered from correspondence and surrounding facts and circumstances." Similarly, in Judgement No. 142, *Bhattacharyya* (1971), while recalling that a fixed-term appointment did not carry a right of renewal, the Tribunal went on to examine the circumstances surrounding the recruitment of the applicant to determine whether they did not create a legal expectancy and, on consideration, it concluded that that was the case.

XIII. Apart from the fact that the Applicant fell into the general category of staff members whose prospects of renewal are strengthened under staff rule

104.12(b)(iii), as discussed in paragraph XI above, the Tribunal considers that some concordant elements of his individual situation could have created in the Applicant a legitimate expectancy that his contract would be renewed, an expectancy thwarted by the conduct of the Administration towards him, or, more precisely, by the Director of UNEP-IE, as will be explained in more detail below. First of all, there was the recommendation by the Joint Departmental Panel on Redeployment, which called for the staff member not only to be removed from the redeployment list but to be placed on a specific post, mentioned by name. Even more significantly, there were the specific instructions of the Executive Director of UNEP, acknowledged by the Director of UNEP-IE, that the staff member should be placed on one of three vacant posts in Paris. The Tribunal is convinced, in view of the facts of the case, that the evidence clearly shows that if the Director of UNEP-IE had not stubbornly refused to comply with the instructions of her superior the Applicant's contract would have been renewed. This conclusion is similar to that arrived at by the Joint Appeals Board, which criticized the arbitrary nature of the treatment meted out to the Applicant and stressed that "in the absence of such arbitrariness the appellant's fixed-term contract would have been extended".

In the opinion of the Tribunal, had it not been for a series of actions on the part of the Director of UNEP-IE expressly designed to separate the Applicant from service, all the objective conditions tending to renewal of the Applicant's fixed-term contract would have been met.

XIV. Bearing in mind that the Applicant was one of those staff members on fixed-term contracts for which staff rule 104.12(b)(iii) provides special protection by requiring the Administration to give them every reasonable consideration when their fixed-term contracts expire, and that there was every reason to believe that the Applicant's contract would be renewed, particularly in view of the favourable attitude of the Executive Director of UNEP, the Tribunal intends to examine in detail the circumstances surrounding the non-renewal of the staff member's last contract.

XV. In his application, the Applicant raises in turn the issues of procedural irregularity, misuse of procedure, prejudice, lack of good faith and affront to his dignity. In its deliberations the Tribunal will not strictly follow the Applicant's categorization of the various actions of which he accuses the Administration and more specifically the Director of UNEP-IE. However, it will make an exhaustive review of the facts, which it may categorize in its own manner.

XVI. To begin with, the Tribunal notes some obvious procedural irregularities, which it will describe here in chronological order of occurrence.

XVII. First of all, as the Joint Appeals Board noted, the Applicant had not received a performance evaluation report since 1993, evidence in itself of severe administrative shortcomings. The lack of an evaluation undoubtedly seriously compromised his chances for an extension of his contract, or at any rate made it impossible to have an objective basis for the non-renewal decision and thus created an opening for arbitrary treatment.

XVIII. Second, the absence of grounds for the non-renewal decision can also be considered a serious procedural irregularity. The Executive Director of UNEP in fact asked the Director of UNEP-IE on 22 April 1997 to make a recommendation for extension or non-extension based on "solid grounds". No grounds were stated, which can be considered contrary to the general principle in international civil service that reasons must be given for decisions — including discretionary decisions — that affect the careers of international civil servants. That aspect of the matter was also criticized by the Joint Appeals Board, which stated: "There is no trace of a progress report or a recommendation based on 'solid grounds' for extension or non-extension of the appellant's fixed-term contract." This situation left the door wide open for highly arbitrary treatment.

XIX. A third example of procedural irregularity is the highly unusual proceeding whereby the staff member concerned, after being removed from the redeployment list, was told to apply for a new post, whereas he should have been placed against a vacant post without having to go through the process of selection and competition with other candidates.

XX. Fourth, the Tribunal cannot too strongly condemn, as an irregularity vitiating the procedure, the great length of time it takes to consider the grievances of staff members of the Organization. The staff member concerned submitted his appeal to the Joint Appeals Board on 21 April 1998, and it was not until 13 March 2000, nearly two years later, that he received a copy of its report. In addition, the Respondent asked for several extensions of the deadline for submitting his answer — in which the legal argumentation covers only seven pages — in a case that presents no particular difficulties that would justify the extensions. This accumulation of delays has resulted in a situation, bad for applicants and for the image of international administrative justice, in which the Tribunal is about to

render a judgement concerning the rights of the Applicant four years after the events that led to the application.

XXI. However, the Tribunal, beyond the procedural irregularities mentioned, discerns in this case an overall picture of discriminatory and bad-faith treatment, which the Joint Appeals Board referred to as a "pattern of arbitrariness". A number of incidents, taken together, demonstrate that at no point was the Applicant treated as an international civil servant could expect to be treated and as the Staff Rules and Regulations say that he should be treated. The Tribunal will briefly summarize these incredible episodes. From the start, the Applicant, who was recruited for a technical post, instead of performing the functions for which he was recruited, was assigned administrative functions with the assurance, never honoured by the Administration, that as soon as possible he would be assigned the functions for which he was qualified. When an administrative post was created, which would presumably have allowed the Administration to assign the Applicant the functions for which he had been recruited, the Administration informed him that he had been placed on the redeployment list. The Joint Departmental Panel on Redeployment, to which the individual concerned had protested the redeployment, strongly criticized the comparative review that had been prepared, since it had been based on an assessment of the way in which functions other than those for which the individual concerned had been recruited had been performed; it had recommended that he should be placed on a specifically named vacant post in Paris. Having been removed from the redeployment list on the recommendation of the Panel, the staff member nevertheless was not assigned to the vacant post in Paris but was told he was to be posted to Mexico, although he had indicated that he could not accept such a post for reasons of health. When called upon to explain why she had not followed the recommendations of the Panel, the Director of UNEP-IE claimed that the post had been frozen and that she had misunderstood the Panel's recommendation. However, a little later this same Director appointed someone else to the post that was supposedly frozen. Finally, the Executive Director of UNEP again asked the Director of UNEP-IE to place the Applicant on one of the three vacant posts in Paris. She again refused to comply, stating that one of the posts had been reclassified upward and another downward, while the third had been abolished — the situation approaches the surreal. Meanwhile, the staff member was left with no tasks to perform from January 1997 to November 1997, at which point, just before the arrival of an auditing team, he was sent a job description, retroactive to 1 July

1997, corresponding to the post for which had had originally been recruited. To complete this litany of unacceptable treatment, on 24 November 1997 the Applicant was informed that the Administration had decided not to renew his contract, on the pretext that his post had been eliminated for lack of funds, even though during the relevant period several posts had been created.

XXII. The Tribunal finds that there has been such an accumulation of procedural irregularities and evidence of discriminatory and bad-faith treatment in this case that it has led to precisely the sort of situation in which the Tribunal, bearing in mind that the Applicant had the right to be given every reasonable consideration when his fixed-term contract was due to expire and had a legitimate expectancy that his contract would be renewed in view of the unequivocal actions of the Executive Director of UNEP regarding him, is fully justified in holding that the non-renewal of a fixed-term contract is illegal.

XXIII. The Tribunal feels compelled to add that this is such a serious case of poor administration that consideration should be given to invoking staff rule 112.3, which provides for the possibility of holding a staff member financially liable for the actions on his or her part that caused the judgement to go against the Administration.

> "Any staff member may be required to reimburse the United Nations either partially or in full for any financial loss suffered by the United Nations as a result of the staff member's negligence or of his or her having violated any regulation, rule or administrative instruction."

On that basis, the Secretary-General may decide that staff members who violate staff rules or regulations or administrative instructions should be held personally liable for the financial loss suffered as a result of their actions (see Judgements No. 358, *Sherif* (1985); No. 887, *Ludvigsen* (1998); No. 914, *Gordon et Pelanne* (1999); No. 108, *Loh* (2001)). Invoking staff rule 112.3 would dissuade staff members from deliberately ignoring the rules and would relieve the Organization of having to bear the cost of an intentional violation of the rules by its staff members.

XXIV. For the foregoing reasons, the Tribunal:

1. Orders the rescission of the decision not to renew the Applicant's fixed-term appointment, which expired on 31 December 1997;

2. Orders the reinstatement of the individual concerned on a post at the same level as the post he encumbered when his contract was not renewed;

3. Fixes the compensation to be paid to him, should the Secretary-General decide, in the interest of the Administration, not to perform the obligation to rescind the non-renewal decision, at two years' net base salary, from which should be deducted the sums already paid to the Application in implementation of the Joint Appeals Board's decision in his favour;

4. Rejects all other pleas.

(Signatures)

Julio **Barboza**
Vice-President

Spyridon **Flogaitis**
Member

Brigitte **Stern**
Member

Geneva, 25 July 2002

Maritza **Struyvenberg**
Executive Secretary